

House Study Bill 715

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON BODDICKER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the establishment of the next friend durable
2 power of attorney relationship between two individuals acting
3 simultaneously as principal and agent of the other party, and
4 providing for a repeal.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 6733HC 80
7 pf/cf/24

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1 1 Section 1. NEW SECTION. 596A.1 DEFINITIONS.
1 2 For the purposes of this chapter, unless the context
1 3 otherwise requires:
1 4 1. "Access and communication rights" means the right to
1 5 access and communication between the parties to a next friend
1 6 durable power of attorney, including but not limited to the
1 7 right to hospital visitation generally provided to an
1 8 immediate family member.
1 9 2. "Agent" means an individual designated under a next
1 10 friend durable power of attorney to act on behalf of the
1 11 principal.
1 12 3. "Equal management" means that either party to a next
1 13 friend is authorized to manage the joint tenancy acting alone.
1 14 4. "Health care" means any care, treatment, service, or
1 15 procedure to maintain, diagnose, or treat an individual's
1 16 physical or mental condition. "Health care" does not include
1 17 the provision of nutrition or hydration except when nutrition
1 18 or hydration is required to be provided parenterally or
1 19 through intubation.
1 20 5. "Health care decision" means the consent, refusal of
1 21 consent, or withdrawal of consent to health care.
1 22 6. "Health care provider" means a person who is licensed,
1 23 certified, or otherwise authorized or permitted by the law of
1 24 this state to administer health care in the ordinary course of
1 25 business or in the practice of a profession.
1 26 7. "Immediate family member" means a spouse, parent,
1 27 sibling, or child.
1 28 8. "Joint tenancy" includes all the real and personal
1 29 property owned by either party at the time of the creation of
1 30 the next friend durable power of attorney and all the real and
1 31 personal property accumulated by either party during the
1 32 duration of the next friend durable power of attorney.
1 33 9. "Next friend durable power of attorney" means a written
1 34 document authorizing each party to act simultaneously as
1 35 principal and agent of the other party for the purposes
2 1 specified in this chapter.
2 2 10. "Party" means the individual acting in the capacity of
2 3 either principal or agent under a next friend durable power of
2 4 attorney.
2 5 11. "Personal affairs" includes, but is not limited to,
2 6 all acts necessary or desirable for maintaining the health,
2 7 education, and welfare of minor children.
2 8 12. "Principal" means a person who is the subject of the
2 9 agency established under a next friend durable power of
2 10 attorney.
2 11 Sec. 2. NEW SECTION. 596A.2 NEXT FRIEND DURABLE POWER OF
2 12 ATTORNEY == ESTABLISHMENT == LIMITATIONS == PRIORITY.
2 13 1. A next friend durable power of attorney may be executed
2 14 to provide all of the following to each party with respect to
2 15 the other party:
2 16 a. Equal management of the joint tenancy, with right of
2 17 survivorship, for the mutual benefit of both parties.
2 18 b. Equal management of the business and legal affairs of
2 19 the other party, for the mutual benefit of both parties.
2 20 c. Equal management of the personal affairs of the other

2 21 party, for the mutual benefit of both parties.
2 22 d. Equal management of the health care decisions of the
2 23 other party.
2 24 e. Access to and communication with the other party.
2 25 2. An individual shall be limited to the execution of only
2 26 one next friend durable power of attorney to be effective at
2 27 one point in time.
2 28 3. Notwithstanding any other provision to the contrary,
2 29 unless the district court sitting in equity specifically finds
2 30 that the individual who is the agent is acting in a manner
2 31 contrary to the wishes of the individual who is the principal
2 32 or the next friend durable power of attorney provides
2 33 otherwise, an individual who is the agent under a next friend
2 34 durable power of attorney has priority over any other person,
2 35 including a guardian appointed pursuant to chapter 633, to act
3 1 in all matters specified in the next friend durable power of
3 2 attorney.
3 3 Sec. 3. NEW SECTION. 596A.3 REQUIREMENTS OF PARTIES.
3 4 A next friend durable power of attorney is valid only if at
3 5 the time of execution each party meets all of the following
3 6 conditions:
3 7 1. Is eighteen years of age or older.
3 8 2. Has the mental capacity to enter into a contract.
3 9 3. Is not married.
3 10 4. Is not a party to another next friend durable power of
3 11 attorney.
3 12 5. Is not a health care provider attending either party.
3 13 Sec. 4. NEW SECTION. 596A.4 REQUIREMENTS FOR EXECUTION
3 14 OF VALID NEXT FRIEND DURABLE POWER OF ATTORNEY.
3 15 1. A next friend durable power of attorney shall be valid
3 16 only if it complies with all of the following and is executed
3 17 in the following manner:
3 18 a. The next friend durable power of attorney form utilized
3 19 in executing the next friend durable power of attorney is an
3 20 official form obtained from the county recorder.
3 21 b. The form is completed, including the date of its
3 22 execution, and is witnessed or acknowledged by one of the
3 23 following methods:
3 24 (1) Is signed by at least two individuals who, in the
3 25 presence of each other and both of the parties, witness the
3 26 signing of the form by both of the parties.
3 27 (2) Is acknowledged before a notarial officer within this
3 28 state.
3 29 c. The completed form is filed in the office of the county
3 30 recorder in the county where either party resides.
3 31 2. The following individuals shall not be witnesses for a
3 32 next friend durable power of attorney:
3 33 a. Either party to the next friend durable power of
3 34 attorney.
3 35 b. An individual who is less than eighteen years of age.
4 1 c. An individual who does not have the mental capacity to
4 2 enter into a contract.
4 3 d. A health care provider attending either party on the
4 4 date of execution of the next friend durable power of
4 5 attorney.
4 6 e. An employee of a health care provider attending either
4 7 party on the date of execution of the next friend durable
4 8 power of attorney.
4 9 3. At least one of the witnesses to a next friend durable
4 10 power of attorney shall be an individual who is not related to
4 11 either party by consanguinity, affinity, or adoption within
4 12 the third degree of consanguinity.
4 13 Sec. 5. NEW SECTION. 596A.5 TERMINATION OF NEXT FRIEND
4 14 DURABLE POWER OF ATTORNEY.
4 15 1. A next friend durable power of attorney is deemed
4 16 terminated if either of the following conditions is met:
4 17 a. One of the parties files a termination form,
4 18 acknowledged before a notarial officer within this state, with
4 19 the office of the county recorder in the county in which the
4 20 original next friend durable power of attorney was filed.
4 21 b. One of the parties marries.
4 22 2. At the time of the termination of a next friend durable
4 23 power of attorney, the joint tenancy shall be divided
4 24 equitably. This provision shall be enforceable in the county
4 25 in which either party resides.
4 26 Sec. 6. NEW SECTION. 596A.6 IMMUNITIES.
4 27 1. A person is not subject to criminal prosecution, civil
4 28 liability, or professional disciplinary action if the person
4 29 relies on the decision or directive of the individual who is
4 30 the agent under a next friend durable power of attorney and
4 31 both of the following conditions are satisfied:

4 32 a. The decision is made or the directive is provided by
4 33 the individual who is the agent and the person believes in
4 34 good faith that the agent is authorized to make the decision
4 35 or provide the directive.

5 1 b. The person believes in good faith that the decision or
5 2 directive is not inconsistent with the desires of the
5 3 individual who is the principal as expressed in the next
5 4 friend durable power of attorney or otherwise made known to
5 5 the person.

5 6 2. The individual who is the agent is not subject to
5 7 criminal prosecution or civil liability for any decision or
5 8 directive made in good faith pursuant to a next friend durable
5 9 power of attorney.

5 10 3. It shall be presumed that an individual who is the
5 11 agent under a next friend durable power of attorney, and a
5 12 person acting pursuant to the decision or directive of such
5 13 individual, are acting in good faith and in the best interest
5 14 of the individual who is the principal absent clear and
5 15 convincing evidence to the contrary.

5 16 4. For the purposes of this section, "acting in good
5 17 faith" means acting consistent with the desires of the
5 18 individual who is the principal as expressed in the next
5 19 friend durable power of attorney or as otherwise made known to
5 20 the individual who is the agent, or where those desires are
5 21 unknown, acting in the best interest of the individual who is
5 22 the principal.

5 23 5. An individual who is the agent or a person acting
5 24 pursuant to the decision or directive of such individual may
5 25 presume that a next friend durable power of attorney is valid
5 26 absent actual knowledge to the contrary.

5 27 Sec. 7. NEW SECTION. 596A.7 FOREIGN DOCUMENTS.

5 28 1. A next friend durable power of attorney or its legal
5 29 equivalent executed in another state or jurisdiction in
5 30 compliance with the law of that state or jurisdiction is valid
5 31 and enforceable in this state, to the extent the document is
5 32 consistent with the laws of this state.

5 33 2. A legal arrangement established by a next friend
5 34 durable power of attorney or its legal equivalent in another
5 35 state or jurisdiction that is valid in another state or
6 1 jurisdiction is valid and enforceable in this state to the
6 2 extent that it is the legal equivalent of a legal arrangement
6 3 established by a valid next friend durable power of attorney
6 4 under this chapter.

6 5 Sec. 8. NEW SECTION. 596A.8 GENERAL PROVISIONS.

6 6 1. A next friend durable power of attorney shall comply
6 7 with the nonconflicting provisions of chapter 144B and section
6 8 633.705 with regard to any directive relating to life=
6 9 sustaining procedures as defined in section 144A.2.

6 10 2. A next friend durable power of attorney shall comply
6 11 with the nonconflicting provisions of chapter 144B.

6 12 3. This chapter shall not be construed or applied to
6 13 prevent an individual from entering into a power of attorney
6 14 other than the next friend durable power of attorney.

6 15 4. Unless otherwise provided by a particular provision of
6 16 this chapter, the principles of law and equity applicable to
6 17 an individual acting in a particular capacity as provided
6 18 under a next friend durable power of attorney, and any
6 19 penalties for acts or omissions in contravention of the law
6 20 relating to that particular capacity, shall supplement, where
6 21 applicable, the provisions of this chapter relative to that
6 22 particular capacity.

6 23 5. The decisions, directives, and actions of an individual
6 24 who is the agent under a properly executed next friend durable
6 25 power of attorney shall be recognized as the legal decisions,
6 26 directives, and actions of the individual who is the principal
6 27 under the next friend durable power of attorney.

6 28 Sec. 9. NEW SECTION. 596A.9 REPEAL.

6 29 This chapter is repealed July 1, 2005.

6 30 Sec. 10. Section 142C.4, subsection 1, paragraph a, Code
6 31 2003, is amended to read as follows:

6 32 a. The attorney in fact pursuant to a durable power of
6 33 attorney for health care or the individual who is the agent
6 34 pursuant to a next friend durable power of attorney pursuant
6 35 to chapter 596A.

7 1 Sec. 11. Section 144A.7, subsection 1, paragraph a, Code
7 2 2003, is amended to read as follows:

7 3 a. The attorney in fact or the individual who is the agent
7 4 pursuant to a next friend durable power of attorney pursuant
7 5 to chapter 596A designated to make treatment decisions for the
7 6 patient should such person be diagnosed as suffering from a
7 7 terminal condition, if the designation is in writing and

7 8 complies with chapter 144B or section 633.705.

7 9 Sec. 12. Section 144B.6, subsection 1, Code 2003, is
7 10 amended to read as follows:

7 11 1. Unless the district court sitting in equity
7 12 specifically finds that the attorney in fact is acting in a
7 13 manner contrary to the wishes of the principal or the durable
7 14 power of attorney for health care provides otherwise, an
7 15 attorney in fact who is known to the health care provider to
7 16 be available and willing to make health care decisions has
7 17 priority over any other person with the exception of an
7 18 individual who is the agent pursuant to a next friend durable
7 19 power of attorney pursuant to chapter 596A, including a
7 20 guardian appointed pursuant to chapter 633, to act for the
7 21 principal in all matters of health care decisions. The
7 22 attorney in fact has authority to make a particular health
7 23 care decision only if the principal is unable, in the judgment
7 24 of the attending physician, to make the health care decision.
7 25 If the principal objects to a decision to withhold or withdraw
7 26 health care, the principal shall be presumed to be able to
7 27 make a decision.

7 28 Sec. 13. Section 331.602, Code Supplement 2003, is amended
7 29 by adding the following new subsection:

7 30 NEW SUBSECTION. 39A. Develop and provide official next
7 31 friend durable power of attorney forms and termination forms,
7 32 and record all completed next friend durable power of attorney
7 33 forms filed.

7 34 EXPLANATION

7 35 This bill establishes a next friend durable power of
8 1 attorney relationship between parties which authorizes each
8 2 party to act simultaneously in the capacity of principal and
8 3 agent of the other party.

8 4 Under a next friend durable power of attorney, each of the
8 5 parties is provided with all of the following:

8 6 1. Equal management of joint tenancy, with right of
8 7 survivorship, for the mutual benefit of both parties.

8 8 2. Equal management of the business and legal affairs of
8 9 the other party, for the mutual benefit of both parties.

8 10 3. Equal management of the personal affairs of the other
8 11 party, for the mutual benefit of both parties.

8 12 4. Equal management of the health care decisions of the
8 13 other party.

8 14 5. Access to and communication with the other party.

8 15 The bill limits an individual to the execution of only one
8 16 next friend durable power of attorney to be effective at one
8 17 point in time and provides for prioritization of the next
8 18 friend durable power of attorney over any other person,
8 19 including a guardian appointed pursuant to Code chapter 633,
8 20 to act in all matters specified in the next friend durable
8 21 power of attorney.

8 22 The bill provides that a next friend durable power of
8 23 attorney is valid only if at the time of execution each party
8 24 is 18 years of age or older, has the mental capacity to enter
8 25 into a contract, is not married, and is not a party to another
8 26 next friend durable power of attorney; or is not a health care
8 27 provider attending either party.

8 28 The bill provides that a next friend durable power of
8 29 attorney is only valid if the form utilized in executing the
8 30 next friend durable power of attorney is an official form
8 31 obtained from the county recorder; the form is completed,
8 32 including the date of its execution, and is witnessed or
8 33 acknowledged by one of the methods provided in the bill; and
8 34 the completed form is filed in the office of the county
8 35 recorder in the county where either party resides. The bill
9 1 specifies individuals prohibited from being a witness for a
9 2 next friend durable power of attorney and requires that at
9 3 least one of the witnesses be an individual who is not related
9 4 to either party by consanguinity, affinity, or adoption within
9 5 the third degree of consanguinity.

9 6 Under the bill, a next friend durable power of attorney is
9 7 deemed terminated if one of the parties files a termination
9 8 form, acknowledged before a notarial officer within this
9 9 state, with the office of the county recorder in the county in
9 10 which the original next friend durable power of attorney was
9 11 filed or if one of the parties marries. The bill provides
9 12 that at the time of the termination of a next friend durable
9 13 power of attorney, a joint tenancy under the next friend
9 14 durable power of attorney is to be divided equitably.

9 15 The bill provides immunities provisions, provides for the
9 16 validity of certain foreign documents, provides general
9 17 provisions applicable to the next friend durable power of
9 18 attorney, provides conforming changes in the Code, and

9 19 provides for a repeal of the chapter on July 1, 2005.
9 20 LSB 6733HC 80
9 21 pf/cf/24